

(2010) 02 PAT CK 0034
In the Patna High Court

Kundan Kumar Jaiswal and Kaushalendra Kumar	APPELLANT
Vs	
National Institute of Technology and Dean (Academics), National Institute of Technology	RESPONDENT

Date of Decision : 03-02-2010

Acts Referred:

Citation : (2010) 2 PLJR 513

Hon'ble Judges : Dipak Misra, C.J; Mihir Kumar Jha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Though this matter was listed for admission, yet on consent of the learned Counsel for the parties it is finally heard. We have heard Mr. D.K. Sinha, learned Senior Counsel along with Mr. Anil Kumar Singh No. 1, the learned Counsel for the appellants and Mr. Shashi Bhushan Prasad, the learned Counsel for the respondent.
2. In this appeal preferred under Clause X of the Letters Patent the legal substantiality and acceptability of the order dated 12.10.2009 passed by the learned Single Judge in CWJC No. 13119 of 2009 is called in question.
3. The undisputed facts are that the appellants are the students of National Institute of Technology, Bihar, a deemed University and they had taken admission in Academic Sessions 2008-09 in the month of July 2008. They undertook the first semester examination but failed. They also appeared in the second semester examination but were unsuccessful.
4. As is evincible, the appellants undertook the special examination as envisaged under Curricula meant for Bachelor of Technology and Bachelor of Architecture Programmes of the National Institute of Technology (for short, "the Institute"). Despite best endeavor they also could not achieve success in the special examination.

5. As the Institute did not permit the appellants to take admission in the third semester they moved this Court invoking the writ jurisdiction. Before the learned Single Judge a contention was urged that had the appellants been permitted to appear in the summer quarters course they would have been bestowed with the benefits of admission in the third semester. As the misfortune would have it they were not allowed to undertake the summer quarters course but, in fact, were permitted to appear in the special examination wherein they failed.

6. After hearing Mr. D.K. Sinha, learned Senior Counsel for appellants and Mr. Shashi Bhushan Prasad, learned Counsel for the Institute, on earlier occasion this Court had desired to be apprised of the provisions whether there is any kind of prohibition by which a student who did not clear the backlog of the semester examination is entitled to take admission in the next semester. In pursuance of the aforesaid Mr. Shashi Bhushan Prasad, learned Counsel for the Institute, has brought the curricula of the Institute Section 9.5 on which much emphasis has been laid by Mr. Prasad, is reproduced below:

9.5 To be able to register in the second year and continue his/her study in the Institute at the end of the first year a student must

(i) complete satisfactorily at least the minimum credits to be decided by the Senate, i.e.

(a) Complete at least 37 credits for B.Tch Program or 41 credits for B.Arch Program.

(b) The Grade point average (GPA) shall be calculated on the basis of some combination of best grades obtained by him/her to attain the minimum 37 credits in B. Tech Program or 41 Credits for B. Arch Program.

AND

(ii) obtain a Grade Point Average (GPA) of not lower than 6.00

A student failing to complete satisfactorily both the above conditions, even after going through Special Examinations and/or Summer Quarter, is required to discontinue his/her studies after the first year and leave the Institute.

7. Placing reliance on the same, the learned Counsel for the Institute contended that if 9.5(h) is appositely appreciated, it would not admit of any doubt that a student who fails to complete satisfactorily both the conditions engrafted under 9.5(i) & (ii) even after going through the special examinations and/or summer quarter he/she is not entitled to take admission in the next academic sessions and is required to repeat the course curricula afresh. The claim put forth by the appellants cannot be entertained as the language does mandatorily provide that they have to start afresh and, therefore, the question of their admission in the third semester does not arise.

8. Mr. D.K. Sinha, learned Senior Counsel for the appellants has invited our attention to Appendix IX which deals with Rules relating to Summer Quarters. Mr.

Sinha has laid emphasis on Clause 5 of the said appendix, which deals with assessment. As immense inspiration has been drawn by Mr. Sinha from the said Clause, we think it apt to reproduce the same:

5. Assessment

The teacher offering a particular subject during the Summer Quarter shall

5.1 Take care of all aspects of the theory component of the subject, viz., lectures, tutorials, assignments etc.

5.2 Conduct all class test, mid-semester examination, end-semester examination viva-voce etc., the end-semester examinations may however be centrally arranged.

5.3 Compute the grade as per rules laid down in Clauses 13.2 (a) through (b) of Section 13. The contribution of the laboratory component, if there is any in the subject, ascertained in the original semester has to be used for computing the numeric marks out of 100.

5.4 The grades-awarded to the registered students must be sent to the Assistant/ Deputy Registrar (Academic) within 3 days from the date of examination was held.

9. Mr. Sinha, learned Counsel for the appellants, has submitted that if the concept of assessment as encapsulated in Appendix IX is understood in proper perspective, it can lead to a singular and exclusive conclusion that had the summer quarters been held, the students would have cleared the papers. The question really does not rest in the said arena. The appellants chose to undertake the special examination but they did not clear the same and after becoming unsuccessful they have taken the path of tergiversation and put forth a contention that had they appeared in the summer quarters they would have qualified.

10. The aforesaid submission of Mr. Sinha may have some semblance of attraction in the realm of academics but it can be stated without any fear of contradiction that it is in the realm of speculation which shall always remain in the perpetual possibility. A perpetual possibility in the world of speculation has no existence in the world of reality. Thus, the submission is neither here nor there. That apart, we may proceed to state that a student who does not qualify in the special examination or summer quarters has to repeat the curricula afresh. Hence, the mandate. The unsuccessful students under the said clause cannot claim to be admitted to the third semester. The ambitious idea on behalf of the appellants is nothing but a somersault which the law does not give countenance. Be that as it may, they are not protected under the curricula of the Institute.

11. In view of the aforesaid premised reasons, we perceive no merit in this appeal and accordingly the same stands dismissed without any order as to costs.